

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1636 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ANOPSINH T WAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR SN SOPARKAR for Petitioner
Ms. Katha Gajjar for M/S PATEL ADVOCATES for
Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH
Date of decision: 10/12/1999

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed by the present petitioner requiring this Court to quash and set aside the oral order of dismissal and/or retrenchment of the petitioner from the employment of the respondent.

2. Facts of the case may be briefly stated as follows:

That the petitioner, as per his case, was appointed as a driver in the employment of the respondents by oral order dated 5.3.1987. That accordingly the petitioner worked as a driver on daily wages between March 1987 and March 1988. The petitioner has produced xerox copies of the entries from the log book showing that he rendered service as driver of an Ambulance Van owned by the respondents.

3. The petitioner then says that the said Ambulance Van belongs to the Community Health Centre at Sanand in Ahmedabad District and it was owned by the State of Gujarat. That the petitioner was not being paid salary though he rendered service as driver in the said van. That on 21.12.1987, the petitioner addressed a letter to the second respondent that he was serving as driver in the employment of the respondents since 5.3.1987 and, therefore, he should be appointed in the said post as he had 18 years of experience as driver. That he had also studied upto 10th Standard and, therefore, he is eligible for appointment as driver in the employment of the respondents on regular basis.

4. The petitioner also says in the petition that he also addressed another letter to the respondent requesting them to release his salary and to confirm his appointment on the said post. That the said communications have been received by the respondents. That despite the said position, the respondents did not accept the request of the petitioner and ultimately terminated the appointment of the petitioner and on the other hand, appointed someone else on 30.3.1988 as driver to drive the said van in the employment of the respondents.

5. The petitioner, therefore, claims that such an action on the part of the respondents in terminating appointment of the petitioner as aforesaid and appointing someone else as driver is illegal and is against the provisions of Articles 14 and 16 of the Constitution of India and against the rules. That the petitioner was, therefore, entitled to be regularised in the said employment. Therefore, the petitioner prays for issue of appropriate writ, order or direction directing to quash and set aside the oral order of dismissal and/or retrenchment of the petitioner and also to direct respondent No.3 to reinstate the petitioner on his original post of Ambulance Van driver and to pay salary due and payable from 5.3.1987 till 30.3.88 as per the pay scale of the Government employment.

6. Rule was issued and the Administrative Officer of the respondents filed affidavit in reply to the contentions raised in the petition. It has been mainly contended in the said affidavit of the Administrative Officer that the petition is not maintainable at law. It has also been contended that the petitioner is having a tea stall near the above referred hospital and as such he was known to the hospital staff. The petitioner was also having driving licence and therefore, the petitioner was engaged to drive the Ambulance Van of the said hospital whenever services of a driver were required. It is also contended that the petitioner has not rendered services for a period of 240 days in one full year. In fact the respondents have given details as to the number of days for which the services have been put in by the petitioner in the employment of the respondents on daily wages basis. Details have been given in para 6 of the affidavit and are reproduced hereinunder:

"Month	Days
March, 1987	12
April, 1987	11
May, 1987	12
June, 1987	12
July, 1987	13
August, 1987	12
September, 1987	15
October, 1987	11
November, 1987	17
December, 1987	18
January, 1988	13
February, 1988	12
March, 1988	21"

It is, therefore, contended in the said affidavit that during the period between March 1987 and March 1988, the petitioner has put in less than 240 days and, therefore, he is not eligible for being regularised for the said position. It is further contended in the affidavit that before procuring the services of the petitioner for the said position, required procedure has not been followed by the respondents and the appointment has been made on daily wage basis and, therefore also the petitioner is not entitled to be regularised in employment.

7. It is further contended that at the relevant time, the post of driver was vacant and therefore, with a view to render services to the patients in the area, it was necessary to have the services of a driver and

services of the petitioner were procured time and again by the respondents. That in March, 1988, post of driver was filled in by a regular process and therefore, the post was not vacant as on 30.3.1988 and consequently, the services of the petitioner were not procured from March, 1988 and therefore, the petitioner was not entitled to be regularised and therefore, he has no right to get any relief. Therefore, it has been prayed that the petition be dismissed with costs.

8. Subsequently, the petitioner has also filed affidavit-in-rejoinder.

9. I have heard the learned Advocate for the petitioner and have also heard Ms.Katha Gajjar, AGP for the respondents.

10. Learned Advocate for the petitioner has come out with a case that the petitioner was appointed under oral appointment order from 5.3.1987 and there is evidence to show that he rendered services between 5.3.1987 and 30.3.1988. There is no serious dispute about the same. However, learned Advocate for the petitioner has referred to the xerox copies of the entries produced from the log book maintained by the petitioner while rendering the service in employment of the respondent. These entries clearly show that during the said period of about one year, the petitioner rendered services as driver in the employment of the respondents to drive the said vehicle. The entries show that the said Van was used by the respondent and was used to carry patients from one Hospital to another. Sometimes it was being used for carrying medicine from one place to another.

11. Any way, the entries produced by the petitioner along with the petition very clearly show that the services of the petitioner were not being required regularly every day. The entries show that the petitioner was required to render services for certain given hours on the dates shown against the entries. Sometimes, the services were required for few hours. Sometimes his services were required for more than hours. The services have not been required every day. This can be gathered from the said entries.

12. Then the information reproduced hereinabove from the affidavit of the respondents also brings it clear that in March 1987, services of the petitioner were required for 12 days, in April 1987 for 11 days and in March 1988, 21 days. It shows that the services were not required every day and it was not a full time job, in the

sense, services were required from 10'0 clock in the morning to 6'0 clock in the evening or the services were required/rendered 8 hours every day. This was therefore, not a regular appointment of the petitioner in the employment of the respondents.

13. So far as the wages are concerned, they were required to be paid to the petitioner on the basis of the working hours for which services have been rendered. It seems that the petitioner has been paid lumpsum amount of Rs.5,000/- and odd on 4.4.1988. The submission of the learned AGP, advanced on behalf of the respondent, is that the petitioner requested that the entire amount may be paid at a time so that he may have a huge amount at his disposal at a time. This submission does not appear to be totally correct because the petitioner has requested to release his dues.

14. Any way, simply because the daily wages due on a particular date were paid at a particular time, it would not make the matter different and the petitioner cannot claim regularisation in the employment on this ground.

15. Moreover, the petitioner was working on daily wages basis. Now, if the services are regularised then the entire process mentioned in the recruitment rules would be by-passed. It would amount to a back-door entry and it would not be proper for this Court to encourage back-door entries. If such practice is adopted and is encouraged by the Court, then instead of appointing persons after due process of rules of the department and would start appointing persons on daily wages basis and would thereafter get their services regularised with a view to by-pass the rules and regulations made by the department for the recruitment. I am, therefore, of the view that such back-door entries cannot be encouraged by this Court.

16. The respondents had one post of driver and it was filled up during 1987-88 and, therefore, the driving work was taken from the petitioner and he was paid accordingly. Subsequently, the respondents have made regular appointment of driver and the said vehicle. Therefore, it would now be not necessary for the respondents to have the services of the petitioner.

17. Any way, the petitioner has not proved to get his appointment in the employment of the respondent, and therefore, he cannot succeed in the present petition.

18. It is true that he had rendered service as and

when it was required by the respondent. It is also true that there is no allegation or complaint against the petitioner about the services rendered by him during the said period of about 12 months. But that would again not entitle the petitioner to claim regularisation against the provisions of rules of recruitment.

19. As said above, the petitioner was appointed without following the rules and he had not rendered services of 240 days continuously. Moreover, it was not a full time job. In this view of the matter, the petitioner is is not entitled for regularisation of his service. In that view of the matter, the present petition would not succeed and it deserves to be dismissed. However, considering the status and position and the condition of the petitioner, there should not be any order of costs so far as this petition is concerned.

20. It seems the respondents had only one post of driver and that has already been filled up by the respondents. Therefore, no other observations can be passed by this Court for considering the case of the petitioner for regularisation. Any way this petition is without any merits and, therefore, it deserves to be dismissed.

21. This petition is, therefore, ordered to be dismissed. Rule discharged. No order as to costs.

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msp